

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DREAMBUILDER INVESTMENTS, LLC,

Plaintiff,

-against-

MERSCORP HOLDINGS, INC.,

Defendant.

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR LEAVE
TO WITHDRAW AS COUNSEL**

Case No.: 1:19-CV-08937 (ER)

Pursuant to Rule 1.4 of the Federal Civil Local Rule of the United States District Court for the Southern District of New York, The Wagoner Firm, PLLC (“TWF”) respectfully moves the Court for an order granting leave to withdraw as counsel of record for Plaintiff Dreambuilder Investments, LLC (“Dreambuilder”) in the above-captioned action.

POINT I

THERE ARE SATISFACTORY REASONS FOR WITHDRAWAL IN THIS CASE

Local Rule 1.4 provides, “An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and posture of the case, including its position, if any, on the calendar, and whether or not the attorney is asserting a retaining or charging lien. All applications to withdraw must be served upon the client and (unless excused by the Court) upon all other parties.”

There are satisfactory reasons to withdraw from this case under Rule 1.16(c)(5) of the New York Rules of Professional Conduct (“NYRPC”), which permit withdrawal when the client deliberately disregards an agreement to pay legal expenses and fees. There are additional satisfactory

reasons to withdraw under Rule 1.16(c)(7) of the NYRPC, which permits withdrawal when a client fails to cooperate with the representation and has otherwise rendered the representation unreasonably difficult for the undersigned to carry out.

POINT II

DREAMBUILDER HAS FAILED TO PAY LEGAL EXPENSES AND FEES AND HAS MADE REPRESENTATION UNREASONABLY DIFFICULT

Rule 1.16(c)(5) provides that “a lawyer may withdraw from representing a client when . . . the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees. . . .” In addition, Rule 1.16(c)(7) provides for withdrawal when “the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively.”

Here, Dreambuilder has deliberately failed to pay fees and otherwise rendered the representation unreasonably difficult. Satisfactory grounds for withdrawal have existed since at least August 2020. TWF attempted to address and resolve these issues on multiple occasions by repeatedly informing Dreambuilder’s representative, Peter Andrews, that there were grounds for withdrawal and that TWF intended to seek to withdraw. Counsel communicated these issues orally and in writing. The date for counsel’s withdrawal has been postponed while counsel attempted to resolve the issues, but counsel has subsequently confirmed that the issues cannot be resolved, so is now moving to withdraw.

Counsel has sought to withdraw from its representation of Dreambuilder, Mr. Andrews, and other Dreambuilder entities in New York State Supreme Court actions. All of these applications have been granted. In the latest hearing on one of those matters pending before Hon. Louis L. Nock, Mr. Andrews confirmed to the court that there were “irreconcilable differences” between himself and the undersigned counsel and no way to continue working together.

Should the Court require additional information on TWF's grounds for withdrawing, counsel can provide an *ex parte* declaration for *in camera* inspection and is available for an *ex parte in camera* hearing, in both instances, to avoid public disclosure of confidences communicated to Counsel by Dreambuilder and impairment or waiver of the attorney-client privilege.

POINT III

GIVEN THE POSTURE OF THE CASE, TWF REQUESTS A 30-DAY STAY OF PROCEEDINGS, IN WHICH DREAMBUILDER MAY SECURE NEW COUNSEL

Plaintiff filed the instant suit in New York Supreme Court on August 26, 2019. Defendant removed the case to this court on September 26, 2019. Defendant filed an answer and counterclaims on October 3, 2019. Plaintiff filed a reply to Defendant's counterclaims on November 14, 2019. Since then, there are been no activity in this matter. As a result, on April 15, 2021, Your Honor directed the parties to submit a status report by April 29, 2021, and noted that failure to comply could result in the Court dismissing the case under Fed. R. Civ. P. 41.

To avoid any prejudice that might ensue to Dreambuilder as a result of this Motion, TWF requests that the court issue a 30-day stay of proceedings – including extending the deadline for the status report – to allow Dreambuilder to obtain new counsel. TWF is aware that Dreambuilder has multiple other attorneys at its disposal, including at least five attorneys that it knows Dreambuilder to be actively working with, and the stay should allow it to secure one in this matter. Additionally, as this matter is in its infancy, there is little in the file to be transferred to the new counsel, and the defendants will not be prejudiced by this request, as 30 days is a reasonable amount of time, and the matter may proceed as soon as Dreambuilder has secured new counsel.

POINT III

COUNSEL IS NOT ASSERTING A RETAINING OR CHARGING A LIEN

TWF is not asserting a retaining or charging a lien. In addition, TWF has already provided Dreambuilder of notice that it will be filing this Motion. It will serve the other parties through the

Court's electronic filing system. It also hereby requests that the court permit it to serve Dreambuilder by email at pandrews@dreambuilder.net with a copy to legal@dreambuilder.net, which are emails that have traditionally been used to communicate with Mr. Andrews.

WHEREFORE, Counsel respectfully moves the Court to grant the motion and enter an order withdrawing The Wagoner Firm, PLLC as counsel of record to Dreambuilder Investments, LLC in this action.

DATED: April 20, 2021
Albany, New York

THE WAGONER FIRM, PLLC



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TO: All Represented Parties (*via CMECF*)
Dreambuilder Investments, LLC (*via Electronic Mail*)